

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

ERIC WATKINS,

Plaintiff,

versus

LIEUTENANT GENTRY, *et al.*,

Defendants.

CIVIL ACTION NO. 1:11-CV-377

MEMORANDUM OPINION AND ORDER

Plaintiff Eric Watkins, formerly a federal prisoner, proceeding *pro se*, brought this lawsuit against prison officials.

The court referred this matter to a United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge determined plaintiff's claims are barred by the applicable statute of limitations and fail to state a claim upon which relief can be granted. Accordingly, the Magistrate Judge recommended granting the defendants' motion to dismiss. After receiving no objections from the parties, the report was adopted and a final judgment was entered.

Plaintiff filed a motion to stay the judgment which was interpreted as a motion to alter or amend judgment. On June 14, 2021, plaintiff was granted an extension of time to file objections to the court's report recommending dismissal of the action. Plaintiff's objections were due on or before the expiration of fifteen days from the date of the order. After no objections were filed within thirty days from the date of the order, the court denied plaintiff's motion to alter or amend judgment.

On August 13, 2021, plaintiff filed a motion to alter or amend judgment or order (#62) concerning the denial of his previous motion to alter or amend judgment. Plaintiff asserts that the copy of the order mailed to him on June 14, 2021 granting an extension of time to file objections was returned to the court in error. As a result, plaintiff claims he did not have an opportunity to file his objections, and he requests relief from the denial of his motion for relief from

judgment (#60). Interpreted liberally, plaintiff's motion is construed as a motion for relief pursuant to Rule 60(b).

Analysis

Rule 60, FED. R. CIV. P., provides in pertinent part:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud ..., misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Plaintiff concedes that the order granting an extension of time to file objections was mailed to the address he provided to the court, but he states he did not receive the order because it was returned to the court in error. After careful consideration of plaintiff's motion, the court is of the opinion it is possible that the mail sent to plaintiff was returned to the court by mistake. Therefore, plaintiff should be allowed additional time in which to file his objections, if any. Accordingly, plaintiff's motion for relief should be granted.

ORDER

For the reasons set forth above, plaintiff's motion for relief from order should be granted. It is

ORDERED that plaintiff's motion for relief from order is **GRANTED** with respect to the denial of his previous motion to alter or amend judgment (#60). It is further

ORDERED that plaintiff is provided an extension of fifteen (15) days from the date of this order in which to file his objections to the report recommending dismissal of this action. Plaintiff is notified that no further extensions of time will be granted.

SIGNED at Beaumont, Texas, this 16th day of December, 2021.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE